IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 645 OF 1989

Shivaji Shankar Zende,
Residing at Dive, Tal. Purandare,
Dist. Pune. ... Appellant

V/s

Bank of India,
Head office at
Nariman Point, Mumbai,
Saswad Branch, Tal. Purandar,
Dist. Pune. ... Respondent

Mr. N.B. Shah for the appellant.

Mr. C.R. Dalvi for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 29TH OCT., 2004.

P.C.:

1. The appellant plaintiff has filed this appeal against the judgment and order passed by the 2nd Addl. District Judge, Pune, dismissing his appeal and confirming the judgment and order passed by the Civil Judge, Jr. Divn., Saswad, Pune, dismissing his suit against the respondent defendant.

2. I have heard the learned counsel for both parties. Perused the record.

The appellant-plaintiff filed the suit bearing Civil Suit No. 164 of 1982 for declaration that he is entitled to the relief under Maharashtra Debt Relief Act, 1975. It was alleged on behalf of the plaintiff that he is resident of Village Dive, Tal. Purandar, Dist. Pune. He owns some irrigated and some non-irrigated land. On 12.2.1970, his father Shankar had borrowed loan of Rs.5000/- from respondent Bank and his father executed a promissory note. The said loan was crop loan. The Bank had filed a Civil Suit No. 29 of 1977 in the Court of Civil Judge, Jr. Divn., Saswad and the decree came to be passed against him. He paid Rs.7,679/- against the loan of Rs.5000/-.

It is the case of the plaintiff that, on 23.12.1972 he exeucted the promissory note for Rs.8000/- and it was also a crop loan. The respondent Bank filed Civil Suit No. 28 of 1977 which was decided on 31.7.1980 ex-parte and the appellant paid so far Rs.4,712/- towards repayment to the respondent. Father of the appellant died on 19.10.1977. The appellant owns land of 1 Hector 40 Ares having three shares of his brothers. He is a small farmer and he had taken crop loan, therefore, he is entitled to the relief of debt under the Maharashtra

Debt Relief Act, 1975 and to that effect the appellant-plaintiff filed the suit for declaration that the respondent Bank cannot recover the said amounts which were the crop loans.

3. The respondent defendant Bank filed the written statement contending that on 12.2.1970, the appellant-plaintiff and his father had borrowed loan of Rs.5000/- for repairs of the well in the field and both had executed promissory note to that effect. It was not a crop loan at all. Since the appellant and his father did not repay the loan, the respondent filed the suit bearing No. 29 of 1977 and the suit was decreed against them on 15.4.1981 ex-parte. It is further contended that, on 23.11.1972 the appellant borrowed the loan of Rs.8000/- for his business of commission agency and it was not a crop loan. The appellant did not repay the loan and, therefore, the respondent Bank filed the Civil Suit No. 28 of 1977 in which ex-parte decree was passed against the defendant on 31.7.1980. The alleged repayment by the appellant against both the loan transactions has been denied by the respondent.

4. The learned Trial Judge came to the conclusion that the plaintiff was not entitled to the relief claimed

mainly on the ground that the documents produced on record were not properly proved and, therefore, could not be considered to pass the decree for declaration as sought for.

The appeal was carried to the District Court, Pune. The learned lower appellate Court Judge, relying on the provisions of Maharashtra Debt Recovery Act, 1975 concluded that the plaintiff was not entitled to the declaration as prayed for. Hence the present appeal.

5. At the outset, it may be noted that at the time of admission, ground No.3 of the appeal memo was held to be raising substantial question of law which relates to the question of consideration of documents produced on record. This ground is obviously raised due to the fact that the learned Trial Judge has held that those were not properly proved because the defendant did not enter the witness box and, therefore, those documents which related to the bank correspondence are held to be not proved. In my considered view, this canot be the substantial question of law but the question of appreciation of evidence and, therefore, cannot be raised in second appeal. However, since the appeal is admitted, it would be necessary to peruse the gist of

the judgment of the lower appellate Court.

The lower appellate Court has dismissed the appeal on the basis of the fact that required application under the amended provisions of the Act, in fact, was not made within the stipulated time and, therefore, the appellant was stopped from raising claim that loans were crop loan and thus in effect was stopped from getting relief under the said Act. In this connection, it must be noted that the Maharashtra Debt Relief Act, 1975 came into force on the appointed day i.e. 22.8.1975. As per Sec.4 of the said Act, if any debt is outstanding against smaller farmer on the appointed day i.e. 22.8.1975, such debt is not recoverable by the bank or creditor. However, under Chapter 5-A the provisions are made for adjustment of debt of certain farmers and for getting some adjustment of debt. Chapter 5-A came by way of Amendment Act, 1979 and came into effect on 15.8.1979. By virtue of Sec. 24 thereof, any debtor or his creditor was required to make an application within a period of six months from the date of commencement of the said Chapter to make an application to the Court for adjustment of the debt of the debtor. The appellant has admittedly not taken the benefit by applying to the Court within six months of commencement of Chapter 5-A

and, therefore, in my view, he cannot get the benefit of the said provision. Mr. Shah, learned counsel for the appellant vehemently urged that both the decrees against the appellant were of the year 1977, whereas the amended provision has come into effect on 15.8.1979 and, therefore, those were not applicable to the present dispute when the decrees were passed in the year 1979. In my considered view, this argument also cannot stand because the facts on record also show that when both the suits were filed in the year 1977 by the present respondent Bank, those were decreed in the year 1980. Suit No. 28 of 1977 was decreed on 31.7.1980. In fact the cause of action for the suit for declaration is also said to have been occurred on 31.7.1980. If it is so, then it is obvious that when Chapter 5-A came into being on 15.8.1979, those suits were pending and it was incumbent upon the present appellant to immediately avail of the benefit of the amended provision and to make an application for adjustment of debt within six months from the commencement of Chapter 5-A i.e. 15.8.1979, which was not done and, therefore, I hold that the appellant cannot get benefit of the provision under the Maharashtra Debt Relief Act, 1975.

Hence, the suit for declaration cannot stand and the

learned lower Appellate Court Judge has rightly dismissed the appeal of the appellant.

In the result, the appeal is hereby dismissed with no order as to costs.

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